

## PCT

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INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY  
(Chapter I of the Patent Cooperation Treaty)

(PCT Rule 44bis)

Applicant's or agent's file reference 141-446PCT	<b>FOR FURTHER ACTION</b>		See item 4 below
International application No. PCT/US2004/004112	International filing date (day/month/year) 12 February 2004 (12.02.2004)	Priority date (day/month/year) 19 September 2003 (19.09.2003)	
International Patent Classification (8th edition unless older edition indicated) See relevant information in Form PCT/ISA/237			
Applicant ANDRX LABS LLC			

1. This international preliminary report on patentability (Chapter I) is issued by the International Bureau on behalf of the International Searching Authority under Rule 44 bis.1(a).
2. This REPORT consists of a total of 4 sheets, including this cover sheet.  
  
In the attached sheets, any reference to the written opinion of the International Searching Authority should be read as a reference to the international preliminary report on patentability (Chapter I) instead.

3. This report contains indications relating to the following items:

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Box No. I | Basis of the report   |
| <input type="checkbox"/> Box No. II           | Priority  |
| <input type="checkbox"/> Box No. III          | Non-establishment of opinion with regard to novelty, inventive step and industrial applicability  |
| <input type="checkbox"/> Box No. IV           | Lack of unity of invention  |
| <input checked="" type="checkbox"/> Box No. V | Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement |
| <input type="checkbox"/> Box No. VI           | Certain documents cited   |
| <input type="checkbox"/> Box No. VII          | Certain defects in the international application  |
| <input type="checkbox"/> Box No. VIII         | Certain observations on the international application   |

4. The International Bureau will communicate this report to designated Offices in accordance with Rules 44bis.3(c) and 93bis.1 but not, except where the applicant makes an express request under Article 23(2), before the expiration of 30 months from the priority date (Rule 44bis .2).

The International Bureau of WIPO 34, chemin des Colombettes 1211 Geneva 20, Switzerland  Facsimile No. +41 22 338 82 70	Date of issuance of this report 28 February 2007 (28.02.2007)
	Authorized officer  Athina Nickitas-Etienne  e-mail: pt04.pct@wipo.int

# PATENT COOPERATION TREATY

PC/US2004/004112

From the  
INTERNATIONAL SEARCHING AUTHORITY

To:  
MARTIN P. ENDRES  
HEDMAN & COSTIGAN, P.C.  
1185 AVENUE OF THE AMERICAS  
NEW YORK, NY 10036

**PCT**

REC'D 16 AUG 2004

WIPO

PCT

## WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

Date of mailing  
(day/month/year)

**12 AUG 2004**

### FOR FURTHER ACTION

See paragraph 2 below

Applicant's or agent's file reference

141-446 PCT

International application No.

International filing date (day/month/year)

Priority date (day/month/year)

PCT/US04/04112

12 February 2004 (12.02.2004)

19 September 2003 (19.09.2003)

International Patent Classification (IPC) or both national classification and IPC

IPC(7): A61K 9/28, 9/16 and US Cl.: 424/474, 490

Applicant

ANDEX LABS LLC

### 1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

### 2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(f) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

### 3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/ US

Mell Stop PCT, Attn: ISA/US  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Facsimile No. (703) 872-9306

Form PCT/ISA/237 (cover sheet) (January 2004)

Authorized officer

Robert M. Joynes

Telephone No. (571) 272-1600

*J. Roberts for*

**WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY**

International application No.

PCT/US04/04112

**Box No. I Basis of this opinion**

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

☐ This opinion has been established on the basis of a translation from the original language into the following language \_\_\_\_\_, which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).

2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

## a. type of material

☐ a sequence listing

☐ table(s) related to the sequence listing

## b. format of material

☐ in written format

☐ in computer readable form

## c. time of filing/furnishing

☐ contained in international application as filed.

☐ filed together with the international application in computer readable form.

☐ furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

## 4. Additional comments:

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International application No.  
PCT/US04/04112

Box No. V Reasoned statement under Rule 43 *bis*.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)

Claims 1-34 YES

Claims NONE NO

Inventive step (IS)

Claims 1-34 YES

Claims NONE NO

Industrial applicability (IA)

Claims 1-34 YES

Claims NONE NO

2. Citations and explanations:

Claims 1-34 meet the criteria set out in PCT Article 33(2)-(3), because the prior art does not teach or fairly suggest a pharmaceutical dosage form where in the controlled release core contains an antihyperglycemic drug and the coating contains a thiazolidinedione derivative wherein the coating layer is an immediate release layer. The cited references teach this two drug combination but the outside layer is not an immediate release composition where not less than 85% of the drug is released within 45 minutes but rather a controlled release layer that releases the drug over a longer period of time.

Claims 1-34 meet the criteria set out in PCT Article 33(4), and thus have industrial applicability as a pharmaceutical formulation because the subject matter claimed can be made or used in industry.

## INTERNATIONAL SEARCH REPORT

International application No.

PCT/US04/04112

**A. CLASSIFICATION OF SUBJECT MATTER**

IPC(7) : A61K 9/28, 9/16

US CL : 424/474, 490

According to International Patent Classification (IPC) or to both national classification and IPC

**B. FIELDS SEARCHED**Minimum documentation searched (classification system followed by classification symbols)  
U.S. : 424/474, 490

Documentation searched other than minimum documentation to the extent that such documents are included in the fields searched

Electronic data base consulted during the international search (name of data base and, where practicable, search terms used)  
BRS**C. DOCUMENTS CONSIDERED TO BE RELEVANT**

Category *	Citation of document, with indication, where appropriate, of the relevant passages	Relevant to claim No.
A	US 6,451,342 B2 (ADJEI et al.) 17 September 2002 (17.09.2002), see entire document.	1-34
A	US 6,524,621 B2 (ADJEI et al.) 25 February 2003 (25.02.2003), see entire document.	1-34

☐ Further documents are listed in the continuation of Box C.

See patent family annex.

## \* Special categories of cited documents:

"A" document defining the general state of the art which is not considered to be of particular relevance

"E" earliest application or patent published on or after the international filing date

"L" document which may throw doubts on priority claim(s) or which is cited to establish the publication date of another citation or other special reason (as specified)

"O" document referring to an oral disclosure, use, exhibition or other means

"P" document published prior to the international filing date but later than the priority date claimed

"T"

later document published after the international filing date or priority date and not in conflict with the application but cited to understand the principle or theory underlying the invention

"X"

document of particular relevance; the claimed invention cannot be considered novel or cannot be considered to involve an inventive step when the document is taken alone

"Y"

document of particular relevance; the claimed invention cannot be considered to involve an inventive step when the document is combined with one or more other such documents, such combination being obvious to a person skilled in the art

"Z"

document member of the same patent family

Date of the actual completion of the international search

26 July 2004 (26.07.2004)

Date of mailing of the international search report

12 AUG 2004

Name and mailing address of the ISA/US

Mail Stop PCT, Attn: ISA/US  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Facsimile No. (703) 872-9306

Authorized officer

Robert M. Joynes

Telephone No. (571) 272-1600

*J. Roberts for*